In the Supreme Court

OF THE

United States

No. 12[illegible]9

ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL,

Appellant,

vs.

UNITED STATES OF AMERICA,

Respondent.

SUPPLEMENTAL MEMORANDUM FOR APPELLANT, ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL.

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This Honorable Court has requested argument regarding the scope of Section 6 and of 13(b) of the Norris-La Guardia Act with relation to prosecutions under the Anti-Trust Act. This Appellant will confine the answers to the situation as regards this particular Appellant and will so far as possible not argue the general questions which will no doubt be covered by the briefs of other Appellants. This Appellant concurs in and incorporates herein so far as possible and proper all the answers and arguments contained in the supplemental briefs of other Appellants in response to the said request of this Honorable Court.

1. SECTION 6 OF THE NORRIS-LA GUARDIA ACT MERELY STATES AS THE LAW REGARDING LABOR UNIONS, THEIR OFFICERS AND AGENTS, THE WELL-RECOGNIZED GENERAL LAW ON THE SUBJECT.

The general law is stated in 22 Corpus Juris Secundum, Section 84, beginning at page 149, as follows:

> "The principle in the law of agency which binds the principal for the acts of his agent performed within the scope of his authority has no application in criminal law.
>
> "The civil doctrine that a principal is bound by the acts of his agent within the scope of the agent's authority, see Agency #231, has no application to criminal law since in order to render a person criminally liable it is essential that he have the requisite criminal intent at the time that the supposed criminal act was committed. In other words, specific intent cannot be imputed to a person through an agent, without the principal's direct participation in the criminal act. Similarly, it has been held that as regards criminal liability for participation in a crime the relation of master and servant is not recognized. Therefore, the mere relation of principal and agent or of master and servant does not render the principal or master criminally liable for the acts of his agent or servant, although done in the course of his employment; it must be shown that they were directed or authorized by him, and a master is not criminally liable for acts of his servant done without the knowledge or consent of the master and in a place not under his control."

The tragic mistake of counsel for the Government throughout this case, which error was followed by the

District Court and Circuit Court of Appeals, was in confusing, or rather in identifying the principle of agency relating to criminal liability with the principle governing civil liability and this distinction is well pointed out in the statement from Corpus Juris Secundum above cited.

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2. NO FOUNDATION WAS LAID BY THE GOVERNMENT FOR HOLDING THIS APPELLANT, ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL, LIABLE FOR ANY ACTS OF ITS OFFICERS OR AGENTS SINCE THERE WAS NO PROOF OF THE NATURE OF ITS "FUNDAMENTAL AGREEMENT OF ASSOCIATION" AND NO PROOF OF THE POWERS OR EVEN OF THE EXISTENCE OF ANY OF ITS OFFICERS OR AGENTS.

As pointed out heretofore, this association, along with other association defendants, brought into Court all of its records pursuant to subpoena; but no record was read in evidence, nor was any evidence whatever offered or received respecting the nature of this organization, its constitution, or by-laws, its purposes and objects, or the designation, responsibilities or powers of its officers, agents or employees.

In the second *Coronado Coal* case, 268 U. S. 295, cited repeatedly by this and other Appellants herein, this Court in holding a labor association *not* liable for acts of its president, said at page 304:

> "In our previous opinion we held that a trades union, organized as effectively as this United Mine Workers' organization was, might be held liable, and all its funds raised for the purpose of strikes might be levied upon to pay damages

suffered through illegal methods in carrying them on; but certainly it must be clearly shown in order to impose such a liability on an association of 450,000 men *that what was done was done by their agents in accordance with their fundamental agreement of association.*"

There is absolutely no evidence in this record as to the "fundamental agreement of association" of the unincorporated association known as the Alameda County Building and Construction Trades Council. Since the powers of the officers and agents of this association do not appear in the evidence, it, therefore, cannot be determined as far as this Appellant is concerned, who are the "individual officers, members, or agents" of this association referred to in Section 6 of the Norris-La Guardia Act, for which reason the contention laid down by this Court in the second *Coronado* case in the language above cited has not been complied with, and there is nothing to uphold the verdict and judgment against this Appellant under the language of Section 6 or of the general law.

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3. **THE APPLICATION OF SECTION 13(b) OF THE NORRIS-La GUARDIA ACT TO THIS APPELLANT IS LIKEWISE OBSCURED BY THE MEAGERNESS OF THE EVIDENCE REFERRING TO THIS APPELLANT.**

As pointed out heretofore, the indictment (paragraph 15, R. 1819) charges that this Appellant is "advisor to, supervisor of, and governing body for local millmen's and carpenters' unions", etc. But the proof in that regard simmered down to a stipulation

that Appellant is "a voluntary, unincorporated association". (R. 262, 264.)

The written agreements constituting the conspiracy for which all these Appellants were convicted bore no signature of this Appellant and there was not a word of evidence at any time that this Appellant ever approved the agreements or had anything whatever to do with their negotiation or execution.

Under the language of Section 13(b) there is no question that relief is sought against this Appellant and the maximum fine of $5000.00 was assessed against it by the District Court. There is no proof, however, that it is engaged in "the same industry, trade, craft, or occupation in which such dispute occurs". It may be inferred that since presumably, though not through any evidence, the association is composed in part at least of trade unionists, it has a direct or indirect interest in this dispute, and that it is composed at least in part of millmen who are concerned in this controversy. The above is pointed out to emphasize the condition of the record with regard to this Appellant. Although all of its records were produced in Court in response to a subpoena, none of these records were read into evidence showing or tending to show "the fundamental agreement of association" as referred to by this Court in the second *Coronado* case cited supra.

For this reason the answers to the questions put by this Court are necessarily along a somewhat different line from what the answers on behalf of other Appellants will undoubtedly be. Other Appellants were ac-

tually parties to the collective bargaining agreements which the Government contends are unlawful. Since they were parties to the agreements, they were undoubtedly interested in their enforcement and their activities undoubtedly come within the provisions and within the protective clauses of the Norris-La Guardia Act.

This Appellant, on the other hand, was indicted, prosecuted, and convicted without any attempt to put in the evidence which might or might not have tended to show that its officers or agents were or were not proceeding in the line of their respective duties and that their acts were or were not authorized or ratified in accordance with the fundamental agreement of association.

This Appellant's position remains then what it has been throughout the case—that it is sued for a conspiracy to which it was not a party and is sought to be held for the acts of individuals whose authority to act for the association has not been shown. In the *Coronado Coal* case it will be recalled that there was elaborate proof of the laws of association and it was in accordance with this elaborate proof that the Court was urged to hold the association liable for the acts of its agents.

4. THIS APPELLANT TOOK SEASONABLE EXCEPTIONS TO THE ERRONEOUS RULINGS.

Appellant, Alameda County Building and Construction Trades Council, moved to dismiss because of the insufficiency of the indictment to state a defense (R. 140, 141), concurred in the request for instructions as presented by the other labor defendants (R. 1171), and proposed instructions on its own behalf for acquittal, and under the provisions of the Bill of Rights (R. 1193), the rulings in all of the above being adverse to this Appellant.

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5. THE ACT OF THE LABOR DEFENDANTS IN CONDUCTING THE PEACEFUL BOYCOTT AND PEACEFUL PICKET LINES CHARGED WERE PROTECTED BY THE BILL OF RIGHTS.

We have made this point and have cited the authorities in our previous brief in this Court. In *Thomas v. Collins*, 323 U. S. 516, this Court has reaffirmed in very emphatic language the priority given the freedoms secured by the First Amendment. (323 U. S. 530.)

This Appellant again calls attention to the language of the concurring opinion of Mr. Justice (now Chief Justice) Stone in *United States v. Hutcheson*, 312 U. S. 219 at 243:

> "the publication, unaccompanied by violence, of a notice that the employer is unfair to organized labor and requesting the public not to patronize him is an exercise of the right of free speech guaranteed by the First Amendment which cannot be made unlawful by act of Congress. See Thornhill v. Alabama, 310 U. S. 88, 60 S. Ct. 736, 84 L. Ed. 1093."

This Appellant asks that the judgment be reversed and the action dismissed.

Dated, San Francisco, California,
April 3, 1946.

Respectfully submitted,
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